

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT  
AGENCY APPEAL PRE-ARGUMENT STATEMENT (FORM C-A)**



APPLICATION FOR ENFORCEMENT



PETITION FOR REVIEW

1. SEE NOTICE ON REVERSE.

2. PLEASE TYPE OR PRINT.

3. STAPLE ALL ADDITIONAL PAGES.

CAPTION:  Time Warner Cable of New York v. National Labor Relations Board		AGENCY NAME:  Nat'l Labor Rels. Bd.		AGENCY NO.:  02-CA-126860	
		DATE THE ORDER UPON WHICH REVIEW OR ENFORCEMENT IS SOUGHT WAS ENTERED BELOW:  June 22, 2018		ALIEN NO : (Immigration Only)	
		DATE THE PETITION OR APPLICATION WAS FILED:  July 24, 2018		Is this a cross-petition for review / cross-application for enforcement?  <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
<b>Contact Information for Petitioner(s) Attorney:</b>	Counsel's Name: Address: Telephone No.: Fax No.: E-mail:				
	Kenneth A. Margolis, c/o Kauff McGuire & Margolis LLP 950 Third Avenue, Fourteenth Floor, New York, NY 10022 Tel. 212-644-1010; Fax. 212-909-3505; margolis@kmm.com				
<b>Contact Information for Respondent(s) Attorney:</b>	Counsel's Name: Address: Telephone No.: Fax No.: E-mail:				
	Linda Dreeben, c/o N.L.R.B., 1015 Half St., SE, Ste. 4163, Washington, D.C. 20570 Tel. 202-273-2960, Fax. 202-273-0191, appellatecourt@nrlrb.gov				
JURISDICTION OF THE COURT OF APPEALS (provide U.S.C. title and section):  29 U.S.C. § 160(f)	APPROX. NUMBER OF PAGES IN THE RECORD:  400	APPROX. NUMBER OF EXHIBITS IN THE RECORD:  90	Has this matter been before this Circuit previously? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If Yes, provide the following:  Case Name:  2d Cir. Docket No.: Reporter Citation: (i.e., F.3d or Fed. App.)		
<b>ADDENDUM "A": COUNSEL MUST ATTACH TO THIS FORM: (1) A BRIEF, BUT NOT PERFUNCTORY, DESCRIPTION OF THE NATURE OF THE ACTION; (2) THE RESULT BELOW; AND (3) A COPY OF ALL RELEVANT OPINIONS/ORDERS FORMING THE BASIS FOR THIS PETITION FOR REVIEW OR APPLICATION FOR ENFORCEMENT.</b>					
<b>ADDENDUM "B": COUNSEL MUST ATTACH TO THIS FORM: (1) THE RELIEF REQUESTED; (2) A LIST OF THE PROPOSED ISSUES; AND (3) THE APPLICABLE APPELLATE STANDARD OF REVIEW FOR EACH PROPOSED ISSUE.</b>					
<b>PART A: STANDING AND VENUE</b>					
<b>STANDING</b>  PETITIONER / APPLICANT IS: <input type="checkbox"/> AGENCY <input checked="" type="checkbox"/> OTHER PARTY <input type="checkbox"/> NON-PARTY (SPECIFY STANDING):			<b>VENUE</b>  COUNSEL MUST PROVIDE IN THE SPACE BELOW THE FACTS OR CIRCUMSTANCES UPON WHICH VENUE IS BASED:  New York is site of the underlying events and proceeding appealed from; Petitioner and Respondent have offices and facilities in New York, and transact significant business there.		

**IMPORTANT. COMPLETE AND SIGN REVERSE SIDE OF THIS FORM.**

**PART B: NATURE OF ORDER UPON WHICH REVIEW OR ENFORCEMENT IS SOUGHT**  
(Check as many as apply)

## TYPE OF CASE:

<input type="checkbox"/>	ADMINISTRATIVE REGULATION/ RULEMAKING	<input type="checkbox"/>	IMMIGRATION-includes denial of an asylum claim
<input type="checkbox"/>	BENEFITS REVIEW	<input type="checkbox"/>	IMMIGRATION-does NOT include denial of an asylum claim
<input checked="" type="checkbox"/>	UNFAIR LABOR	<input type="checkbox"/>	TARIFFS
<input type="checkbox"/>	HEALTH & SAFETY	<input type="checkbox"/>	OTHER:
<input type="checkbox"/>	COMMERCE		(SPECIFY)
<input type="checkbox"/>	ENERGY		

1. Is any matter relative to this petition or application still pending below? ☐ Yes, specify: \_\_\_\_\_ ☒ No

2. To your knowledge, is there any case presently pending or about to be brought before this Court or another court or administrative agency which:

(A) Arises from substantially the same case or controversy as this petition or application ? ☐ Yes ☒ No

(B) Involves an issue that is substantially similar or related to an issue in this petition or application ? ☐ Yes ☒ No

If yes, state whether ☐ "A," or ☐ "B," or ☐ both are applicable, and provide in the spaces below the following information on the *other* action(s):

Case Name:

Docket No.

Citation:

Court or Agency:

Name of Petitioner or Applicant:

Date:

8-9-18

Signature of Counsel of Record:



### NOTICE TO COUNSEL

**Once you have filed your Petition for Review or Application for Enforcement, you have only 14 days in which to complete the following important steps:**

1. Complete this Agency Appeal Pre-Argument Statement (Form C-A); serve it upon your adversary, and file it with the Clerk of the Second Circuit in accordance with LR 25.1.
2. Pay the \$500 docketing fee to the Clerk of the Second Circuit, unless you are authorized to prosecute the appeal without payment.

**PLEASE NOTE: IF YOU DO NOT COMPLY WITH THESE REQUIREMENTS WITHIN 14 CALENDAR DAYS, YOUR PETITION FOR REVIEW OR APPLICATION FOR ENFORCEMENT WILL BE DISMISSED. SEE LOCAL RULE 12.1.**

## **ADDENDUM A**

### **1. BRIEF DESCRIPTION OF THE NATURE OF THE ACTION**

Petitioner Time Warner Cable disciplined several foremen at its Paidge Avenue facility in Brooklyn for violating a requirement that they carry tools at work. The foremen informed Derek Jordan, a business agent for their union, International Brotherhood of Electrical Workers, AFL-CIO, Local Union No. 3. Jordan then held what he termed a “safety meeting” for members of the foremen’s bargaining unit outside the facility the next morning. Jordan parked his car in the middle of the street, instructed several employees to do likewise, and then stood with employees in the middle of the street from about 6:30 until nearly 8:00 a.m. During that time, most employees missed the start of their shifts, and all vehicular traffic into and out of the facility was blocked. As a result, there were numerous delays in servicing customers that day.

The Respondent NLRB’s General Counsel (GC) alleged that Petitioner’s questioning as well as its suspension of four employees caught on a security video participating in the blockade constituted an “unfair labor practice” in violation of Sections 8(a)(3) and (1) of the National Labor Relations Act. Following an administrative trial, an Administrative Law Judge found merit to both aspects of the GC’s Complaint.

## **2. RESULT BELOW**

On administrative appeal, the NLRB agreed with Petitioner that it lawfully suspended the employees for participating in an unlawful “mass picket”; it rejected the GC’s and Union’s claims that the employees could not be disciplined because they merely joined, but did not start, the blockade – and that they were effectively only bystanders.

However, the NLRB affirmed the Administrative Law Judge’s conclusion that Petitioner did violate the National Labor Relations Act by effectively “coercively interrogating” the employees about their union support or union activities, particularly when Petitioner’s representatives asked the employees questions like “Who told you about this gathering?”; “When did you receive notification of the gathering?”; and “How was this event communicated to you?” The NLRB ordered Petitioner to cease and desist from any further such activity, and to post a remedial notice.

## **3. COPY OF ALL RELEVANT OPINIONS / ORDERS FORMING THE BASIS FOR THIS PETITION FOR REVIEW**

Attached.

## **ADDENDUM B**

### **(1) THE RELIEF REQUESTED**

Petitioner respectfully requests that the Court of Appeals grant its Petition for Review and set aside that portion of the Board's Order finding that Petitioner violated the National Labor Relations Act.

### **2. LIST OF PROPOSED ISSUES**

Whether the NLRB committed legal and factual error in finding that Petitioner committed an unfair labor practice, and whether it committed legal error by ordering Petitioner to remedy such purported unfair labor practice.

### **3. APPLICABLE STANDARD OF REVIEW FOR EACH ISSUE**

The standard of review of the foregoing Board conclusion is whether it is supported by "sound analysis," *Int'l Longshoremen's Ass'n v. NLRB*, 537 F.2d 706, 712 (2d Cir. 1976), and has "a reasonable basis in law," *SDBC Holdings, Inc. v. NLRB*, 711 F.3d 281, 287 (2d Cir. 2013).